

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 9, 2001

IN RE:

ALL TELEPHONE COMPANIES TARIFF
FILINGS REGARDING
RECLASSIFICATION OF PAY
TELEPHONE SERVICE AS REQUIRED BY
FEDERAL COMMUNICATIONS
COMMISSION (FCC) DOCKET 96-128

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DOCKET NO. 97-00409

ORDER ON DISCOVERY DISPUTES

This matter came before the Pre-Hearing Officer for consideration of the *Response of United Telephone – Southeast, Inc. to Order Granting Motion to Compel* (“Response to Order”) filed by United Telephone-Southeast, Inc. (“United”) on September 27, 2001 and the *Reply of Tennessee Payphone Owners Association to Response of United Telephone – Southeast, Inc. to Order Granting Motion to Compel* (“Reply”) filed by the Tennessee Payphone Owners Association (“TPOA”) on October 5, 2001.

I. Procedural History

On September 10, 2001, the TPOA filed a *Motion to Compel United Telephone-Southeast to Respond to Discovery* (“Motion”). In its Motion, TPOA contended that “United has failed to provide payphone specific and PTAS-specific cost data needed by TPOA to establish direct costs of PTAS service.”¹ TPOA specifically objected to United’s responses to Request Nos. 11(a),

¹ *Motion to Compel United Telephone-Southeast to Respond to Discovery*, p. 1 (Sept. 10, 2001).

11(b), and 18(c) of the *First Set of Data Request From Tennessee Payphone Owners' Association to Sprint/United Telephone-Southeast, Inc.* United did not file a response to the Motion.

On September 20, 2001, the Pre-Hearing Officer entered an *Order Granting Motion to Compel*. The Pre-Hearing Officer found that TPOA's interpretations of United's responses were reasonable and ordered United to provide the information requested in Request Nos. 11(a), 11(b), and 18(c) or to explain why the information is not available on or before September 27, 2001.²

On September 27, 2001, United filed the Response to Order. United contends that it has "answered request numbers 11(a) and 11(b) in full."³ As to Request No. 18(c), United states that it "did not provide payphone specific local loop lengths because the information was not readily available."⁴ Thereafter, United explains that it is preparing a cost study that will incorporate payphone specific locations and that it will complete the study on October 10, 2001. United requests that the Pre-Hearing Officer extend the September 27, 2001 deadline to October 10, 2001.⁵

TPOA filed its Reply on October 5, 2001. TPOA specifically accuses United of misconduct contending United intentionally mislead TPOA.⁶ TPOA asserts that the Pre-Hearing Officer should order United to "immediately produce actual payphone and PTAS loop lengths in response to TPOA's discovery questions."⁷ Lastly, TPOA states that it "will determine how to respond to the revised cost study after reviewing it."⁸

² See *Order Granting Motion to Compel*, p. 3-4 (Sept. 20, 2001).

³ *Response to United-Telephone Southeast, Inc. to Order Granting Motion to Compel*, p. 1 (Sept. 27, 2001).

⁴ *Id.* at p. 2.

⁵ See *id.* at 3.

⁶ See *Reply of Tennessee Payphone Owners Association to Response to United-Telephone Southeast, Inc. to Order Granting Motion to Compel*, p.1 (Oct. 5, 2001).

⁷ *Id.* at 2.

⁸ *Id.*

II. Findings and Conclusions

The Pre-Hearing Officer finds that the filing of the cost study described by United in its Response to Order may aid the Authority in its efforts to set payphone rates pursuant to the New Services test. For this reason the Pre-Hearing Officer concludes that United should be permitted to file the cost study. As a corollary, TPOA should be afforded an opportunity to review the newly-filed cost study and to submit additional discovery requests relevant thereto if it so chooses.

Further, the filing of the new cost study could render any dispute as to Requests Nos. 11(a) and (b) moot because the inputs may change. Moreover, it seems United has no further information to add to its previously provided response and that this may simply be a dispute as to the methodology used by United. To the contrary, it is unclear whether the filing of the new cost study will provide the information requested by the TPOA in Request No. 18(c), and the TPOA is entitled to a response as ordered in the *Order Granting Motion to Compel*. For these reasons, the Pre-Hearing Officer concludes that no further response is necessary at this time as to Request Nos. 11(a) and (b), but that United must provide, in addition to the cost study, a specific response to Request No. 18(c).

IT IS THEREFORE ORDERED THAT:

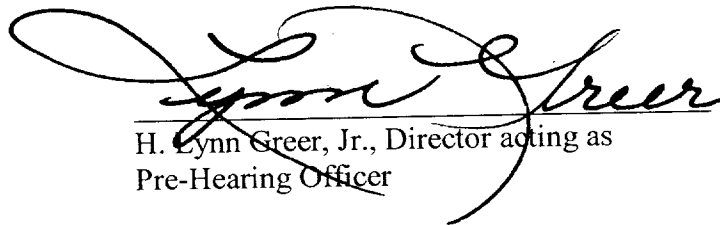
- 1) United Telephone-Southeast, Inc. shall file the cost study referenced in the September 27, 2001 *Response of United Telephone – Southeast, Inc. to Order Granting Motion to Compel* along with all supporting documentation on or before **Wednesday, October 10, 2001**.
- 2) United Telephone-Southeast, Inc. shall provide the information requested in Request No. 18(c) of the *First Set of Data Request From Tennessee Payphone Owners*.

Association to Sprint/United Telephone-Southeast, Inc. on or before **Wednesday, October 10, 2001.**

3) Tennessee Payphone Owners Association shall serve additional discovery requests, if any, upon United Telephone-Southeast, Inc. and file same with the Tennessee Regulatory Authority on or before **Wednesday, October 31, 2001.**

4) United Telephone-Southeast, Inc. shall provide Tennessee Payphone Owners Association with responses to discovery requests and file same with the Tennessee Regulatory Authority on or before **Wednesday, November 14, 2001.**

5) Any party aggrieved by this Order may file a Petition for Reconsideration with the Pre-Hearing Officer within fifteen (15) days of the entry of this Order.


H. Lynn Greer, Jr., Director acting as
Pre-Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary